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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIRST INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

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TABLE OF CONTENTS

Page

INTRODUCTION 4

I. CATEGORY "A" CLAIMS IN GENERAL 7
A. Urgent claims for expedited processing 7
B. Claim Form "A" 7
C. "A" claim amounts 8

II. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY "A" CLAIMS 10

III. METHODOLOGY FOR PROCESSING CATEGORY "A" CLAIMS 12
A. Several methods 12
B. The first instalment of category "A" claims . . . 13

IV. THE PROCESSING OF THE FIRST INSTALMENT OF CLAIMS . . . 16
A. Processing by the secretariat 16
B. Validation 17
1. The format of the claims 17
2. Claims by Iraqi nationals 18
3. Duplicate claims within the "A" claims category 18
C. Other issues 19
1. Departure date outside the jurisdictional period 19
2. Limitations on claiming in more than one category 20
3. Interest 21
D. Computerized Verification of category "A" claims in the first instalment 23
1. Departure from Kuwait and Iraq during the Gulf crisis 23
2. The Arrival/Departure Records 31
3. Evidentiary value of Arrival/Departure Records 35

a. General considerations and determinations 35

b. Evidentiary value of the various records 37

4. The computerized matching 39

V. RECOMMENDED COMPENSATION FOR THE FIRST INSTALMENT OF CATEGORY "A" CLAIMS 41

ANNEX

Category "A" Claims Recommended for Payment in the First Instalment (Summary Table). 43

INTRODUCTION

On 2 August 1990, Iraq invaded Kuwait and set into motion the events leading to the Gulf War. Iraq's invasion and occupation of Kuwait was reversed through an unprecedented international effort conducted under the auspices of the United Nations. In April 1991, shortly after the cease-fire, the United Nations Security Council adopted resolution 687 (1991), reaffirming Iraq's liability "under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". In response to mandates in resolution 687, the Security Council subsequently in resolution 692 (1991)[2] established the United Nations Compensation Commission (the "Commission") to process claims arising from the invasion and occupation and to administer the Compensation Fund (the "Fund") to pay compensation for the claims. The Commission, a subsidiary organ of the Security Council, is composed of a Governing Council consisting of the fifteen members at any given time of the Security Council, a secretariat headed by an Executive Secretary, and Commissioners appointed to review and resolve claims.

This report contains the first recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims"), pursuant to article 37 (e) of the Provisional Rules for Claims Procedure (the "Rules").[3] Category "A" claims are considered to be among the "most urgent claims" for which the Governing Council has set forth "simple and expedited procedures" in order to provide "prompt compensation

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[1] S/RES/687 (1991), para. 16.

[2] S/RES/692 (1991).

[3] S/AC.26/1992/10, article 37(e) requires that "[e]ach Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim".

in full" or "substantial interim relief".[4] This report makes compensation recommendations for the category "A" claims reviewed in the first instalment of claims submitted to the Panel by the Executive Secretary of the Commission.[5] In considering these claims, the Panel has, in accordance with article 31 of the Rules, applied Security Council resolution 687 (1991), the criteria established by the Governing Council for this category of claims and other pertinent decisions of the Governing Council.

The Panel was appointed by the Governing Council on 31 March 1993 upon nomination by the Secretary-General of the United Nations on the basis of recommendations made by the Executive Secretary of the Commission.[6] The Panel held three preparatory meetings with the secretariat of the Commission on 11 to 12 June and 18 November 1993 and on 28 January 1994 to discuss the methodology and procedures used by the secretariat in the processing of category "A" claims and to organize the work of its substantive sessions. The Executive Secretary delivered the claims with a report pursuant to article 32 of the Rules[7] to the Panel on 3 June 1994, along with information and views submitted by Governments that have submitted claims and the Government of Iraq. The Panel commenced its work of reviewing claims at its first substantive session held from 3 to 6 June 1994. Subsequent sessions were held from 23 to 25 August and 13 to 15 September

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[4] See "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1991/1), (hereinafter referred to as "Decision 1"), para. 1.

[5] Rules, article 32, para. 1. It is anticipated that a number of additional instalments will be necessary in order for the Panel to complete its review of all the category "A" claims received by the Commission.

[6] Rules, article 18, para. 1. The Panel was originally composed of Mr. José María Ruda (Chairman), Mr. Kamal Hossain and Mr. Matti Pellonpää. On 7 July 1994, Mr. Ruda passed away. On 12 August 1994, the Governing Council appointed Mr. Rafael Rivas-Posada as a new member of the Panel and Mr. Kamal Hossain as Chairman.

[7] Article 32 provides that the Executive Secretary submits to the Panel the claims together with the related documentation, containing the results of the preliminary assessment made by the secretariat with respect to the formal requirements of the claims, and any other information deemed to be useful for the work of the Commissioners, as well as the additional information and views submitted by Governments and international organizations that have submitted claims and the Government of Iraq, in accordance with article 16 of the Rules.

1994. All the preparatory meetings and the substantive sessions were held in Geneva at the headquarters of the secretariat and were conducted in private.[8]

Part I of this report contains general information relevant to category "A" claims, including the criteria for their expedited processing and their relationship to other claims categories. The magnitude and the circumstances of the departure from Kuwait and Iraq during Iraq's invasion and occupation of Kuwait, and the evidentiary standard set for the resulting departure claims, are summarized in Part II. Part III outlines the methodologies adopted for the processing of the claims, and, in particular, for the first instalment, as established in decisions of the Governing Council. Part IV describes the processing of the claims performed by the secretariat, and the manner in which the issue of duplicate claims is dealt with. Part IV also elaborates specifically on the computerized verification of the claims for the first instalment, i.e. the "matching", and on the Panel's determinations with respect to the evidentiary value of the various records used for such verification. Part V states the recommendations made in respect of the claims, including the amounts recommended to be allocated to each Government for the claims submitted by it. A breakdown of the amounts to be paid to each individual claimant will be provided to each respective country and to UNDP separately.

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[8] Rules, article 30, para. 2; and article 33, para. 2.

I. CATEGORY "A" CLAIMS IN GENERAL

A. Urgent claims for expedited processing

Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991. In adopting Decision 1 during its first meeting, the Governing Council determined that category "A", "B" (for serious personal injury and death) and "C" (for individual losses up to US $ 100,000) claims should be processed on an "expedited basis". Decision 1 provides for "simple and expedited procedures by which Governments may submit consolidated claims and receive payments on behalf of the many individuals who suffered personal losses as a result of the invasion and occupation of Kuwait". The Governing Council foresaw that "[i]f, as expected, the volume of claims in [the "A" category] is large, the Commissioners would be instructed to adopt expedited procedures to process them". Such expedited procedures would provide "[f]or a great many persons ... prompt compensation in full [and] for others ... substantial interim relief while their larger or more complex claims are being processed".

B. Claim Form "A"

The Governing Council requested the Executive Secretary to prepare and distribute standard forms for the submission of claims within each claim category.[9] Claim Form "A" was prepared by the secretariat and, in December 1991, was forwarded to Governments, international organizations and other entities entitled to submit claims to the Commission for its distribution among the claimants.

In anticipation of the high number of category "A" claims, the secretariat designed and distributed along with Claim Form "A" a computer software, the "'A' Claim Form Data Capture System" (hereinafter referred to as the "DCS"). In accordance with article 7, para. 1 of the Rules, category "A" claims had to be submitted in the computer format distributed by the secretariat.

The DCS replicates in computer format all the fields contained in a paper Claim Form "A". Governments or international organizations that were entitled to file claims with the Commission arranged for the information provided by the claimants

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[9] Decision 1, para. 21.

on the paper claim form to be entered into the DCS. The claims thus captured were submitted on diskettes to the secretariat to be loaded into the Commission's "A" Claims Database. While the DCS cannot reproduce the documentary evidence that the claimants were instructed to attach to their claim forms,[10] it captures the information that the claimants have provided on their forms. The claims that were received by the secretariat in computerized format therefore are not accompanied by their supporting documentation. By 15 September 1994, over 900,000 category "A" claims had been filed with the Commission.

C. "A" claim amounts

Under the category "A" claims, a claimant has the option of claiming four different amounts: US$ 2,500 or US$ 4,000 for individual claims and US$ 5,000 or US$ 8,000 for family claims.[11] By claiming US$ 4,000 or US$ 8,000 under the Claim Form "A", a claimant agreed not to claim under any other category.[12] Furthermore, if a claimant wants to file a claim for departure for more than US$ 2,500, he or she must claim for the full amount in a category other than the "A" claims category.[13]

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[10] Such evidence will be reviewed in the context of the processing of further instalments of claims.

[11] Item (3) of the "Instructions for claimants" printed on the Claim Form "A" states:

> "If other members of your family ... are also claiming for departure, all such family departure claims should be submitted on a single claim form. No more than FIVE THOUSAND US DOLLARS (US$ 5,000) will be paid under this form for departure with respect to any family consisting of any person and his or her spouse, children and parents".

[12] The second paragraph of item (5) of the "Instructions for claimants" printed on the Claim Form "A" states:

> "If you and your family members agree not to file claims under any other form or category, you may use this form to claim an additional amount of US$ 1,500 (for a total of US$ 4,000 per person), and the limit for your family ... will be raised to US$ 8,000".

[13] Item (4) of the "Instructions for claimants" printed on the Claim Form "A" states as follows: "If you submit a claim on this form for the fixed amount of US$ 2,500, you will not be able to file any other claim for departure from Iraq or Kuwait". The first paragraph of item (5) of the same instructions furthermore states: "If you believe that your claim for departure is larger than US$ 2,500 and can be documented, and you wish to claim for the full amount, you should submit it on another claim form". In the same respect, paragraph 11 of Decision 1 states

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that "[i]f the loss in question was greater than $2,500 and can be documented, it may instead be submitted under [other categories]".

II. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY "A" CLAIMS

The evidentiary standard set by the Governing Council for departure claims is to a large extent explained by the modest level of compensation allowed in this category, as well as the massive number of departees and the trying circumstances in which the departure during the relevant period took place, with the resulting difficulties in obtaining or preserving precise documentary evidence.

The magnitude of the movement of persons can be seen from the following figures.[14] There were more than 2.6 million foreign nationals living in Kuwait and Iraq in mid-1990, of whom 25 per cent were dependent family members. The Government of Kuwait reports that the country's pre-invasion population was approximately 2,142,600 persons, of whom 1,316,014 were expatriate workers and their dependents. The pre-invasion expatriate population in Iraq was in the vicinity of 1,162,000 persons.

In the months following the invasion, Kuwait's population is estimated to have decreased to nearly 492,000 persons, with about 90 per cent of the expatriate population leaving the country. In Iraq, the total number of expatriates is reported to have fallen to approximately 887,000 within two months of the invasion, and by the end of the hostilities to less than 400,000 persons. The majority of those who remained in Iraq were stranded Asians and Egyptians, while those in Kuwait were predominantly Palestinians. Almost all nationals of countries members of the Organization for Economic Cooperation and Development ("OECD") and of other developed countries are reported to have departed. By the end of February 1991, around 2 million people are estimated to have left Kuwait and Iraq.

The evidentiary standard applicable to the urgent departure claims is stated in Decision 1 and more specifically in article 35 of the Rules. Article 35 provides generally that

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[14] The statistical information set forth in this Part and in Part IV of the present report has been drawn from a variety of sources (see footnote 26, infra). Several of these reports acknowledge that due to the urgency of the circumstances, the massive number of displaced persons, and the general paucity of reliable pre-invasion statistical sources, the statistics provided in the reports represent the responsible organization's best estimate of the situation.

"[e]ach claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each Panel will determine the admissibility, relevance, materiality and weight of any document and other evidence submitted".

Particularly with respect to category "A" claims, article 35 (a) of the Rules states that

"[f]or the payment of fixed amounts in the case of departures, claimants are required to provide simple documentation of the fact and date of departure from Iraq and Kuwait. Documentation of the actual amount of the loss will not be required".

Thus, evidence is only required regarding the fact and the date of departure, i.e. it is sufficient to establish that a claimant left Kuwait or Iraq between 2 August 1990 and 2 March 1991. No evidence is required concerning the quantum of the loss caused by the departure, as the successful claimants in the category "A" claims are awarded fixed amounts.

As is explained more fully in Part IV., infra, the simple documentation of the fact and date of departure was produced with regard to almost all (more than 99 per cent) of the claims in the first instalment through the computerized matching of the claims against an Arrival/Departure Database developed from documentary evidence such as Arrival/Departure Records made available by various Governments and international organizations.[15] In these cases, given the availability of reliable documentary evidence on which the Arrival/Departure Database was based, it was not necessary for the Panel to review evidence submitted with the claim forms. For reasons explained below (see Part III., infra), a few (less than one per cent) cases involved manual matching or review of documentary evidence submitted with the claim forms.

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[15] For more on the Arrival/Departure Records and their evidentiary value, see Part IV. D. 2 and 3, infra.

III. METHODOLOGY FOR PROCESSING CATEGORY "A" CLAIMS

A. Several methods

The methodology for processing the category "A" claims takes into account, on the one hand, the massive number of claimants and, on the other, the Governing Council's desire to resolve these claims expeditiously, as explained in Part I, supra. The fundamentals of a methodology meeting this objective were envisaged in article 37 (a) and (b) of the Rules as follows:

> "The Secretariat will proceed to check individual claims by matching them, insofar as possible, against the information in its computerized database. The results of the database analysis may be cross checked by the panel.
>
> With respect to claims that cannot be completely verified through the computerized database, if the volume of claims is large, the panel may check individual claims on the basis of a sampling with further verification only as circumstances warrant".

Three methods of verifying the category "A" claims have thus been contemplated by the Rules: matching, sampling and additional verification "as circumstances warrant".

In accordance with a decision taken at the ninth session of the Governing Council, the first instalment of claims covered by the present report is comprised principally of claims that have been verified through matching.

The mass exodus of persons out of Kuwait and Iraq referred to above led to the evacuation of the departees from the Gulf region through a plethora of Government-sponsored evacuation programmes and/or with the assistance of several international organizations. Many of the Governments and international organizations involved in the evacuation programmes have kept records of the identity of individuals who travelled from Kuwait or Iraq and from other countries in the Gulf region to their countries of origin. As explained in more detail in Part IV. C., infra, the Commission has collected this information to create an Arrival/Departure Database to be used for the verification of the category "A" claims.

Matching consists of determining whether a particular claimant appears in one or more records constituting the Arrival/Departure Database. For the first instalment of claims, such a match has for all but a few claims been performed with the

help of the computer. Exceptionally, for a limited number of claims, the evidence was reviewed by means of manual matching or the examination of the paper files (for more details see Part III. B., infra).

B. The first instalment of category "A" claims

This section of the report sets forth the considerations taken into account by the Governing Council in defining the criteria and procedures by which the total number of claims and the country-wise composition comprising the first instalment of category "A" claims should be determined for payment. The Panel's recommendations as set out in Part V., infra, for the payment of claims as set out in the Summary Table attached to this report, are made according to the guidelines and within the limits laid down by the Governing Council, as elaborated below.

The Governing Council during its ninth session, after considering a report of the Executive Secretary and materials presented by the secretariat, and taking into account the information provided to the Council regarding the total number of claims submitted by different countries, the dates of their submission, the estimate of time it would take to process claims even through expedited procedures, and the estimate of the funds that might be available to meet the first instalment, determined that the first instalment of category "A" claims should comprise 50,000 to 60,000 claims, and that the country-wise composition should be determined in accordance with the following guidelines:

(a) Only claims filed by 1 July 1993 should be processed;[16]

(b) Each country that had filed category "A" claims by 1 July 1993 should be allotted a projected number of compensable claims equal to 200 or the total number of claims that each country had filed if the latter number was less than 200. This was intended to allow for accelerated disposal of all the claims of countries that had filed no more than 200 claims by 1 July 1993;

(c) The initial allotment of 200 claims for each country that had filed claims by 1 July 1993 should then be

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[16] 1 July 1993 was the original deadline for the filing of claims in categories "A", "B", "C" and "D". The deadline was subsequently extended to 1 January 1994.

increased by seven per cent of the total number of claims filed by that country by 1 July 1993. This would mean that the proposed allotment of compensable claims for each country that had filed a large number of claims would be broadly proportional to the total number of claims filed by that country by 1 July 1993;

(d) The number that would be arrived at by following the above procedures should then be further increased for the countries that had filed claims by 14 August 1992 by seven per cent of the total number of claims filed by such countries by that date (14 August 1992), thus to benefit the claimants of countries that had made an effort to submit their claims as early as possible after the secretariat circulated the claim forms to the Governments, as they had been encouraged to do by Decision 1 of the Governing Council.

The country-wise composition of the first instalment so determined would provide the maximum number of claims in respect of which each country would be entitled to payment in the first instalment subject to verification of the claims through the prescribed verification process. Thus, if the number of verified claims proved to be less than the maximum to which a country was entitled as determined by the above procedures, payment would be recommended only for the actual number of verified claims. The principal verification process to be used would be computerized matching.

Using this methodology, the likelihood that a claimant would be matched against an entry in the Arrival/Departure Database is significantly higher for the claimants from countries that have provided Arrival/Departure Records due to the fact that most persons appearing in a particular record are residents of the country that has submitted the record in question. However, not all countries that have been allotted claims in the first instalment have provided Arrival/Departure Records. Furthermore, even if a country has provided such records, there is no guarantee that each claimant of such country is listed therein as the records do not necessarily contain all departees.

Assuming that a claimant does appear in a particular record, there is also no guarantee that the quality of the data will allow the computer to find such claimant in the record in question. Finally, the Panel concluded that some records do not indicate departure from Kuwait or Iraq during the jurisdictional period. Therefore, even if a claimant matches against such a

record, this does not sufficiently establish departure from Kuwait or Iraq during the relevant period to recommend the payment of the claim at issue.[17]

In order to verify the projected number of claims, the Panel, with the assistance of the secretariat, has reviewed the category "A" claims that were filed by 1 July 1993, were successfully downloaded into the Commission's Claims Database and successfully passed the validation stage.[18]

The number of claims per submitting country that the Panel recommends for payment in the context of this instalment pursuant to such verification is listed in the column "Number of Claims Recommended for Payment" of the Summary Table attached to this report. These claims are taken from the successful matches that qualify for compensation, and their number is as close as possible to the number of claims projected by the Governing Council for the first instalment.

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[17] In addition to the primary verification method used for the first instalment, i.e. computerized matching, the Panel reviewed the results of the manual matching and of the examination of the paper files performed by the secretariat for a limited number of countries that had no claims verified on the basis of the computerized matching. The Panel included claims verified by these two methods in the first instalment in order to comply with the mandate of the Governing Council to have represented in this instalment each country that had filed claims by 1 July 1993.

[18] A claim passes the validation stage successfully (1) if it is not found to have a defective format, (2) if it is not recognized as a "possible duplicate" and (3) if the claimant is not an Iraqi national. See Part IV. B., infra.

IV. THE PROCESSING OF THE FIRST INSTALMENT OF CLAIMS

A. Processing by the secretariat

The secretariat initially checked whether the claims received met the formal requirements listed in paragraph 1 of article 14 of the Rules. Governments or authorized entities that submitted claims not meeting the formal requirements were so notified and given 60 days to correct any deficiencies. The claims, which in this category were submitted on diskettes, were then downloaded into the Commission's "A" Claims Database.

Considerable efforts were made by the secretariat to solve difficulties with the downloading of diskettes that did not meet the technical specifications. Where these difficulties could not be overcome, the diskettes had to be returned to the Governments concerned with a request to correct the deficiency within a prescribed time.

Concurrent with the article 14 review, the secretariat analyzed the claims received for the purposes of preparing reports pursuant to article 16 of the Rules.[19] These reports, containing information on the claims received during the period covered, addressed the significant legal and factual issues raised by the claims submitted. The information with respect to category "A" claims was mostly statistical in nature. The article 16 reports were then circulated to the members of the Governing Council, to all Governments that submitted claims to the Commission and to the Government of Iraq. Each of these Governments was entitled to present to the Executive Secretary, for transmission to the Panel, additional information and views concerning the issues raised in the reports.[20]

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[19] Rules, article 16, para. 1: "The Executive Secretary will make periodic reports to the Governing Council concerning claims received. These reports shall be made as frequently as required to inform the Council of the Commission's case load but not less than quarterly. The reports shall indicate: a) Governments, international organizations or other eligible parties that have submitted claims; b) the categories of claims submitted; c) the number of claimants in each consolidated claim; d) the total amount of compensation sought in each consolidated claim. In addition, each report may indicate significant legal and factual issues, raised by the claims, if any".

[20] Rules, article 16, para. 3: "Within 30 days in case of claims in categories A, B, C, and 90 days in case of claims in other categories, of the date of the circulation of the Executive Secretary's report, the Government of Iraq as well as

In order to assist the Panel in its review of the claims, the secretariat submitted the claims along with a report pursuant to article 32 of the Rules.[21]

B. Validation

Before matching the claims against the Arrival/Departure Database, the claims were passed through a preliminary computerized screening process hereinafter referred to as "validation". The purpose of validation is threefold. First, as explained in more detail below, some aspects of the format of the claims are checked. Second, the Iraqi claimants are separated from the non-Iraqi claimants. Third, the validation programme checks whether there are any duplicate claims in the "A" claims category.

In order to perform the validation, a computer programme was developed by the secretariat. The general characteristics of this computerized process and the supporting programme, which are outlined in this section of the report, and their application by the secretariat have been reviewed by the Panel and have received its approval.

1. The format of the claims

At the initial stage of the validation process the computer checks (1) whether there are corresponding family member records in the Claims Database for the claims that have been presented as family claims and (2) whether the claims contain the proper codes for, inter alia, the claimant's nationality and the amount claimed.

Where the computer detects a problem for a particular claim at this stage, such a claim is separated from the other claims and is not allowed to move to the subsequent processing stages. Until the format of such a deficient claim is rectified, no

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Governments and international organizations that have submitted claims, may present their additional information and views concerning the report to the Executive Secretary for transmission to panels of Commissioners in accordance with Article 32. There shall be no extensions of the time limits specified in this paragraph".

[21] See supra footnote 7. Among the material submitted to the Panel pursuant to article 32 were also general briefs and explanations that some Governments had attached to their claims submissions.

attempt is made to detect whether such claim has been duplicated or whether it has been filed by an Iraqi national. Further, it is not subjected to the automated matching process. The Panel has requested that before they are processed further, the claims that were detected to have an invalid format be corrected, and no such claims are included in the first instalment.

2. Claims by Iraqi nationals

The validation programme developed by the secretariat also allows for the detection of claims that have been filed on behalf of Iraqi nationals. None of the claims in the first instalment have been made on behalf of Iraqi nationals.

The Panel foresees that future instalments may contain a limited number of claims submitted on behalf of Iraqi nationals. Pursuant to Decision 1, such claims would be outside the Commission's jurisdiction, unless the claimants in question have bona fide dual nationality of a state other than Iraq.

3. Duplicate claims within the "A" claims category

The Panel took note of the fact that a number of claims in the "A" Claims Database are duplicates. There appear to be mainly two causes of duplication. First, several countries have submitted a number of claims more than once. Second, in some instances claims were inadvertently downloaded more than once into the secretariat's computer system.

To avoid multiple recovery resulting from such duplication, a computerized programme was developed by the secretariat to detect the duplicate claims to the extent possible. This programme is designed to compare the claims to each other in order to detect the duplicates. In performing that comparison, the computer relies on the following information appearing on the claims: the claimant's name, passport number, nationality and year of birth. If a claim is detected to be a duplicate by this programme, it is separated from the other claims and labelled "possible duplicate". Such a claim is not allowed to move to the subsequent processing stages until it is analyzed further. No "possible duplicate" claims are included in the first instalment.

The information that the claimants provide on the claim form is not of a nature to allow the computer programme to detect duplicates without error. The Panel has therefore instructed the secretariat to analyze further, after the submission of the first instalment to the Governing Council, the claims that have been

identified and separated as "possible duplicates" to confirm whether such claims are indeed duplicates. The claims that are confirmed to be duplicates ultimately will be withdrawn from the system. Those that are not duplicates will be reintegrated into the system and will continue in the verification process.

Although the secretariat has used reasonable and practical means to detect the existence of duplicate claims within the "A" claims category, the Panel notes that the secretariat's ability to perform this task successfully depends to a large extent on the existence and quality of the information contained in the claim form. It, therefore, cannot be totally excluded that certain duplicate claims will not be detected because such information is insufficient for that purpose. That being the case, the Panel recommends that Governments keep an accurate record of the persons to whom amounts awarded are paid in order to minimize the risk of multiple recovery on the basis of a duplicate "A" claim. The Panel recommends that a note to this effect be included in the table containing the breakdown of the amounts to be paid to each individual claimant that will be provided for each country separately.

C. Other issues

1. Departure date outside the jurisdictional period

The claim form requests each claimant to indicate his or her "date of departure". This date refers to the date of departure from Kuwait or Iraq. The Panel observes that several claimants have mentioned dates that are outside the jurisdictional period, i.e. 2 August 1990 to 2 March 1991.

In considering how to treat such claims, the Panel is mindful of the fact that a significant number of these claimants have misinterpreted the wording on the claim form. For instance, several claimants have read the term "date of departure" to mean the date that they originally left their country to take up residence in Kuwait or Iraq. When confronted with a claim form mentioning a date that is outside the jurisdictional period, the Panel in many cases is unable to determine whether such date was meant by the claimant to be the date of departure from Kuwait or Iraq or the date of departure from the claimant's country of origin.

That being the case, the Panel is of the opinion that in the context of the first instalment it would not be appropriate to dismiss the claims at issue purely on the basis of the date

mentioned in the claim form. Where a claim mentioning a date of departure outside the jurisdictional period matched against a record that the Panel has determined to establish departure during such a period, the Panel has concluded that the claimant misinterpreted the claim form and that the claim should not be dismissed on the grounds that the claimant stated that he or she departed outside the relevant period.

2. Limitations on claiming in more than one category

As explained in Part I. C., supra, the filing of a category "A" claim may limit the claimant's options of filing claims in other categories before the Commission. By filing a category "A" claim for US$ 4,000 or US$ 8,000, a claimant has agreed not to file claims under any other category. Also, if a claimant intends to file a claim for departure for more than US$ 2,500, he or she must claim for the full amount of departure losses in a category other than category "A".

In an effort to enforce the above rules and in order to reduce the risk of multiple recovery in the context of the first instalment, the secretariat compared on the computer the claims in category "B" that had been downloaded into the Claims Database and the claims contained in the first instalment of category "C", against the "A" claims made for US$ 4,000 or US$ 8,000 that had been downloaded into the Claims Database at the time of the performance of this check. Where a claimant who has filed a "B" or "C" claim was detected by the computer to also have filed an "A" claim for US$ 4,000 or US$ 8,000, the "A" claim will be presented separately to the Governing Council for its determination as to whether or not compensation recommended by this or other Panels should be adjusted or be otherwise dealt with.

In addition, the secretariat compared on the computer the "C" claims containing a "C1" departure claim[22] against the "A" claims that had been downloaded into the Claims Database at the time of the performance of this check. Where a claimant who has

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[22] In addition to damages arising from departure from Iraq or Kuwait, on page "C1" of the category "C" claim form compensation may also be claimed for inability to leave Iraq or Kuwait, a decision not to return to Iraq or Kuwait, hostage-taking or other illegal detention. Claims for such losses on page "C1" "must be documented by appropriate evidence of the circumstances and amount of the claimed loss" (article 35, para. 2 (c) of the Rules).

filed a "C1" departure claim was detected by the computer to also have filed an "A" claim, the "A" claim will also be presented separately to the Governing Council for its determination.

As in the context of the detection of duplicate claims within category "A", the Panel notes that the secretariat's ability to detect claims that do not comply with the applicable rules on cross-category filing limitations to a large extent depends on the existence and quality of the information contained in the claim forms. It is not unlikely that a number of claims that fail to comply with such rules will not be detected because such information is insufficient for that purpose. Considering these technical limitations as well as the effects that could result from different implementations of the rules on cross-category filing limitations, the Panel would consider it helpful if the Governing Council were to give further guidance on how to treat the above claims that were found not to comply with such rules.

3. Interest

In its Decision on "Awards of Interest" (hereinafter referred to as "Decision 16"),[23] the Governing Council provided that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council further stated that it will consider "at the appropriate time" the methodology for the calculation of interest and its payment, and that payment of interest will only take place after the principal amounts of all awards are paid.

In the Panel's view the above Decision of the Governing Council is supported by international law and jurisprudence which recognize the principle that interest should be paid on the principal amount of awards to make successful claimants whole for their losses.[24]

Several passages from Decision 1 reveal that the forced

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[23] S/AC.26/1992/16.

[24] Cf., e.g., Lillich, R., "Interest in the Law of International Claims", Essays in Honour of Voitto Saario and Toivo Sainio, 1983, p. 51; Wetter, J.G., "Interest as an Element of Damages in the Arbitral Process", International Financial Law Review, 1986, p.20.

departure of claimants from Kuwait or Iraq and the ensuing profound disruption of their living conditions was deemed by the Governing Council to constitute a "loss" suffered by the evacuees in question. Paragraph 1 of Decision 1, establishing the principle of simple and expedited procedures for category "A", "B" and "C" claims, refers to "the many individuals who suffered personal losses as a result of the invasion and occupation of Kuwait" (emphasis added). Paragraph 11, specifying the evidentiary requirements applicable to the category "A" claims, states that "[d]ocumentation of the actual amount of loss will not be required" (emphasis added).

Considering the high number of category "A" claims that were expected to be filed and the urgency with which the Governing Council wanted to process such claims, the Governing Council decided that the awards in this category should be for fixed sums ranging from US $2,500 to US $8,000. Such fixed sums obviated the need for the Panel to address the issue of the assessment of damages, which simplifies and therefore expedites the processing of the category "A" claims. The fixed sums in question constitute an estimation by the Governing Council of the losses suffered by the claimants. This is illustrated by the fact that such claimants had the opportunity to file in other categories for a higher amount if they believed that the damages that they actually suffered were greater than the fixed sums envisaged in the category "A" claims. In this respect, paragraph 11 of Decision 1 states that "[i]f the loss in question was greater than $2,500 and can be documented, it may instead be submitted [in categories other than "A"]" (emphasis added). Similarly, item 5 of the "Instructions for claimants" printed on the "A" Claim Form reads as follows: "If you believe that your claim for departure is larger than U.S. $2,500 and can be documented, and you wish to claim for the full amount, you should submit it on another claim form".

Considering that the fixed sums to be awarded in category "A" claims are deemed to represent the losses suffered by the claimants, it is the Panel's view that, according to Decision 16, "[i]nterest [should] be awarded from the date the loss occurred until the date of payment" to the successful "A" claimants. Furthermore, as a result of the Decision adopted by the Governing Council on "Priority of Payment and Payment Mechanism",[25] which provides that in view of the limited availability of funds for compensation only "[a]n initial amount of $2,500 (or the

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[25] S/AC.26/Dec.17 (1994).

principal amount of the award, if less)" will be paid "to each successful claimant in categories 'A', 'B' and 'C'", successful category "A" claimants will receive the full amount of their award much later than originally anticipated. That being the case, the payment of interest to such claimants would be all the more appropriate.

Having regard to the above considerations, the Panel recommends that interest should be paid on the awarded amounts in category "A" claims in accordance with Decision 16.

As regards the date from which interest should be awarded, in view of the number of category "A" claims to be processed and the practical difficulties that would arise from attempting to calculate interest as of the date of departure of each claimant separately, the Panel is of the opinion that the phrase "the date the loss occurred" in Decision 16 should be interpreted to be a single fixed date for all category "A" claims. Moreover, the Panel finds that the date of the invasion, 2 August 1990, should serve as the fixed date. This conclusion is supported by the consideration that, ultimately all compensable damages may be deemed to have been caused by Iraq's unlawful invasion of Kuwait, which commenced on 2 August 1990.

D. Computerized verification of category "A" claims in the first instalment

1. Departure from Kuwait and Iraq during the Gulf crisis[26]

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[26] The information contained in this section is based on a variety of sources that the secretariat collected and the Panel consulted. They include: United Nations Economic and Social Council ("ECOSOC"), Report on the Situation of Human Rights in Kuwait under Iraqi Occupation, by Walter Kälin, Special Rapporteur of the ECOSOC Commission on Human Rights, E/CN/.4/1992/26 (16 January, 1992); International Labour Office ("ILO"), Informal Report on Migrant Workers Affected by the Gulf Crisis, (February-March 1991); ILO, ILO Regional Seminar/ Symposium on the Gulf Crisis and Its Implications for Labour-Sending Countries, (May 1992); ILO, Inter-regional Tripartite Round Table on International Migration (Arab and Asian Countries), Bangkok, 11-12 Dec.1990, (Geneva, 1991); ILO, Third Supplementary Report of the Director General, 249th Session (Feb.-Mar. 1991); International Organization for Migration ("IOM"), Labour Migration and Returnees from Kuwait and Iraq, IOM Assessment Mission to Bangladesh, The Philippines and Sri Lanka. (April/May 1991); IOM, Plan of Action; Update of Operations (20 December 1990 to 15 January 1991; United Nations Disaster Relief

The computerized methodology used for the verification of the "A" claims involves the comparison of the information in the claims with information obtained from outside sources relating to the departure of individuals from Kuwait and Iraq during the Gulf crisis. This section of the report provides background information on the number of departees and the circumstances of their departure.

As summarized earlier (see Part II., supra), Iraq's invasion of Kuwait on 2 August 1990 precipitated a mass exodus of persons living and working in those two countries. Hundreds of thousands of foreign workers and their families fled these countries in a bid to return home or to find safety.

The mass flight of persons resident in Kuwait commenced within a few hours of the entry of Iraqi troops into that country during the early morning hours on 2 August 1990. The outbound migration of persons resident in Iraq did not reach mass proportions until several days later. Initial departure routes from Kuwait were towards Saudi Arabia. Thereafter, Jordan became the focal point of transit and departure for the hundreds of thousands of expatriate workers and their families seeking to escape the hostilities. Turkey, Syria, Iran and Saudi Arabia were also used as departure and transit points by a large number of departees.

Organization (UNDRO) News, Iraq-Kuwait Crisis: The Plight of Returnees, Special Supplement; UNDRO, Regional Humanitarian Plan of Action Relating to the Crisis between Kuwait and Iraq (October 1991); Connell, J., "The Gulf War and Asian Labour Migration", (a paper prepared for the Conference on International Manpower Flows and Foreign Investment in Asia, September 1991); Van Hear, N., "Mass Flight in the Middle East: Involuntary Migration and the Gulf Conflict 1990-91", Geography and Refugees: Patterns and Processes of Change, Black, R. and Robinson, V. (eds.) (Belhaven Press 1993); Addleton, J., "The Impact of the Gulf War on Migration and Remittances in Asia and the Middle East" IOM Quarterly Report, (December 1991); Freedman, L. and Karsh, E., The Gulf Conflict 1990-1991; Diplomacy and War in the New World Order (1993); Gunatilleke, G., Migration to the Arab World; Experience of Returning Migrants (United Nations University Press, 1991). The Panel also considered information gathered by the secretariat during a fact-gathering mission to Kuwait in November 1993 and materials submitted to the Commission by several Governments in support of claims filed under both category "A" and category "C".

By most accounts, the majority of departees left Kuwait and Iraq during the first two months of the occupation. Persons continued to depart from these countries in large numbers until mid-January 1991. Subsequently, the flow of departees is reported to have decreased substantially.

During the early stages of the exodus from Kuwait and Iraq, border countries are reported to have applied strict controls and procedures, often resulting in departees having to wait for several days before being allowed to enter or depart from the country. Reports note, however, that the large numbers of people and the urgency of the situation made it very difficult for border authorities to apply the usual procedures for entry and departure to every person arriving in or departing from their respective countries when the number of fleeing persons was at its height.

The first groups of departees left Kuwait and Iraq using their own resources. Subsequently, some departees left Kuwait and Iraq through Government-sponsored evacuation programmes and/or with the assistance of one or more international organizations involved in the evacuation operations. During this latter stage many departees continued to make their own way out of the conflict region.

Having reached a point of first arrival, many OECD nationals and Kuwaiti citizens, as well as the more affluent Asian and Arab expatriate workers, were able to secure passage out of Saudi Arabia, Jordan and Iraq by air using their own or Government-provided funds. Because of the unanticipated excess demand, departees often had to wait for several days before they were able to leave. The vast majority of departees, however, arrived destitute with little or no means of returning to their respective countries. Food, shelter, clothing, and medical requirements were met in transit camps established for such purposes by the host Governments, by embassies or consulates, and/or by the international organizations involved in co-ordinating the relief effort; as was overland transportation to air, sea and land evacuation points.

The main relief and evacuation activities were concentrated in Jordan. Smaller-scale relief operations also were undertaken in Turkey, Syria, Iran and Iraq. Perhaps half of the 865,000 third country nationals transiting Jordan were Egyptians; others were mostly expatriates from India, Bangladesh, Pakistan, Sri Lanka, the Philippines and Sudan. Most of the 60,000 evacuees who left or passed through Turkey were Bangladeshis, Pakistanis, Sri

Lankans, Vietnamese and Eastern Europeans, together with some 5,000 Turkish nationals who returned home. Some 100,000 people entered Iran, of whom 70,000 were Iranian or Kuwaiti nationals, and most of the remainder Pakistanis. More than 400,000, mostly Egyptian and Kuwaiti nationals, are reported to have transited through Saudi Arabia. Of 60,000 people who left Iraq for Syria, about 50,000 were Syrians, while the remaining 10,000 were mostly Lebanese, Palestinians and Moroccans.

Upon arrival in their home countries, Governments had to facilitate the absorption of the massive numbers of returnees by providing food, lodging, medical attention, clothing and small relocation stipends.

The table below provides a statistical overview of the composition of the expatriate population resident in Kuwait and Iraq, and of Kuwaiti nationals, in mid-1990, as well as an estimate of the number of departees. The table also provides a comparison of this information with the number of category "A" claims filed with the Commission.

Country of Origin	Pre-2 August 1990 Population		Evacuees/ Departees/ Returnees	Category "A" Claims
	Kuwait	Iraq		
Bangladesh	112,000		63,000	62,000
Egypt	215,000	900,000	500,000	290,000
India	172,000	9,000	181,000	100,000
Jordan (including Palestinians)	500000	30,000	350,000	60,000
Kuwait	825,000	--	452,000	50,000
Pakistan	105,000	7,000	73,000-107,000	32,000
Philippines	45,000	10,000	45,000-55,000	43,000
Sri Lanka	100,000	1,000	79,000-101,000	88,000
Sudan	15,000	200,000	35,000-200,000	20,000
Vietnam	--	16,000	16,000	16,000
Europe and Americas	8,000	22,000	30,000	14,000

The following annotations to the table provide an overview of the departure patterns of nationals from the countries accounting for over 80 per cent of the submitted "A" claims:

(a) Bangladesh: Between 3 September 1990 and 15 January 1991, approximately 63,000 Bangladeshi nationals returned home from Kuwait and Iraq. Some 44,000 were transported home on IOM-coordinated air charters to Dhaka; 38,000 of them through Jordan, about 6,000 through Turkey, and less

than 300 from Iran. The IOM was responsible for overland transport of Bangladeshis through Iraq to camps and transit centres in neighbouring countries. Other departees travelled overland through Iran, Turkey, Afghanistan and Pakistan. A number of returnees are reported to have received a relocation stipend of approximately US$ 140 from their Government upon their return;

(b) Egypt: Egyptians may have constituted 70 per cent of the total departee population, with the majority of them passing through Jordan, and the rest transiting through Saudi Arabia, Syria and Iran. Practically all Egyptian departees were transported overland to Jordan in private or IOM-hired vehicles. In Jordan they spent some time in camps or transit centres before being moved to Aqabah, where they were transported by sea to the Egyptian ports of Nuweiba and Suez. Approximately 300,000 Egyptians travelled from Aqabah on Saudi Arabian funded ship charters between 3 September and 4 October 1990. Reportedly 20,000 Egyptians were evacuated on the IOM road-ferry-road operations during and after the Allied air strikes from January to March 1991. Those with valid documents and proof of departure were given 1,200 Egyptian pounds in emergency aid which came from a Kuwaiti Government grant;

(c) India: The first wave of Indians to depart Kuwait and Iraq made their way, with minimal Government assistance, in private vehicles to Jordan. Approximately 1,000 Indian nationals drove via Iran, Turkey, Afghanistan and Pakistan to India. An estimated 150,000 Indian departees were evacuated with the help of their Government. About 30,000 Indians made their way home with IOM assistance. The majority of Indian departees left Kuwait and Iraq between August and October 1990;

(d) Jordan (including Palestinians): The bulk of Jordanian/Palestinian departees left Kuwait and Iraq during the first two months of the crisis. The majority of those who left Kuwait in the first wave of departures did so with minimal outside assistance. People who departed later may have had access to IOM-overland transport facilities. A few affluent Jordanians/Palestinians departed by plane. The vast majority, however, travelled to Jordan by land via Iraq. Approximately 20 per cent of the Jordanian/ Palestinian community is reported to have been outside of Kuwait and Iraq when the invasion occurred. Some 317,000 Jordanians and Palestinians were still in Kuwait and Iraq

by October 1990. The first wave of Palestinian and Jordanian departures from Kuwait was followed by a second wave which took place after March 1991. The Jordanian Government is reported to have provided relocation assistance;

(e) Kuwait: Nearly all of the Kuwaitis who left Kuwait did so by road through Saudi Arabia. Over 50 per cent of Kuwaiti citizens are reported to have departed their country after 2 August 1990 or to have already been outside. Those who entered Saudi Arabia benefitted from relocation assistance provided by the Kuwaiti Government-in-exile and the Saudi Arabian Government. Others, who were already outside of the country when the invasion occurred, are reported to have received similar relocation grants upon registration and proof of their Kuwaiti nationality. The Government of Kuwait instituted an intensive programme to register all Kuwaitis outside of Kuwait on or after 2 August 1990;

(f) Pakistan: Approximately 95 per cent of Pakistani nationals resident in Kuwait and Iraq departed by the end of September 1990. An estimated 11,000 are reported to have stayed in Kuwait or Iraq, or in neighbouring Gulf countries, throughout the crisis. The first group of Pakistanis fled across the Kuwaiti-Saudi Arabian border, arriving in Jeddah from where they were flown home by their Government. However, over 50 per cent of Pakistani nationals returned to Pakistan by making a month long journey overland through Iraq, Iran and Turkey. 46 per cent of the returnees were evacuated on Government planes, primarily from Jordan and Saudi Arabia, as well as Turkey, Iraq and Iran. A Government-chartered ship transported 2.8 per cent of the returnees from Jeddah to Karachi. Only a small fraction of Pakistani returnees made their way home with international assistance. The IOM-coordinated airlift carried about 4,900 Pakistanis home in the period between 3 September 1990 and 19 January 1991. 4,260 of these flew home from Jordan while close to 600 left from Turkey and under 100 from Iran. Upon their return, family heads were provided with a Rs.6,000 emergency grant and dependents travelling alone were given an allowance for inland travel and temporary accommodation;

(g) Philippines: Approximately 41,000 Philippine nationals left Kuwait and Iraq in August and September 1990. By 2 March 1991, only about 1,700 Filipinos were still in

Kuwait, while around 3,000 had stayed in Iraq. Most Filipinos made their way to Baghdad from where their embassy and the IOM transported them in the initial stages to Saudi Arabia (1,960), later to Jordan. From transit camps in Jordan, IOM flights carried some 15,000 evacuees from 15 August 1990 onwards to the Philippines. The Philippine Government funded the evacuation of around 14,000 of the Filipinos who returned. Several hundred were flown out of Turkey, Iraq, Iran and other Gulf countries. Most of them had to rely on their Government's repatriation programme and a UNICEF/OWWA Assistance Programme;

(h) Sri Lanka: Between August 1990 and March 1991, approximately 79,000 Sri Lankans returned to their home country. Reports indicate that some 5-6,000 Sri Lankans were unable to leave Kuwait, and that by October 1990 there were no Sri Lankans left in Iraq. Some 4,000 Sri Lankan nationals made their way home in August 1990 relying on their own resources since international assistance had not yet become available. Affluent Sri Lankans are reported to have flown home directly out of Baghdad, Jeddah and Riyadh. However, the majority of Sri Lankans were transported overland to Jordan by IOM-hired buses, and were flown from Amman (over 42,000) to Colombo on 123 IOM-coordinated air charters, while some returned home on an IOM ship charter from Aqabah. A significant number were evacuated on IOM-coordinated flights from Basra (over 4,500), Riyadh (700), Ankara (300) and Teheran (50). About 20,000 Sri Lankans were repatriated on Government-coordinated charter flights from Amman, and 1,900 on a ship charter from Aqabah. Reportedly 16,690 Sri Lankans were also evacuated on 57 charters sponsored by other countries and organizations. Returnees were provided with temporary accommodation, food and medical care, counselling and transport to their home areas, and could convert up to Rs. 10,000 of any foreign exchange they might have salvaged (including Kuwaiti Dinars);

(i) Sudan: It is estimated that most of the Sudanese in Kuwait and Iraq left as the crisis escalated. The majority of them travelled overland to Baghdad or Basra and then on to Jordanian border camps. Reports indicate that only 32,000 of the Sudanese departees actually returned to Sudan. Many of the Sudanese who fled Kuwait and Iraq managed to find new employment in the region. In the period before the international airlift began, the majority of Sudanese returned home on Government planes and

Government-chartered ships from Jordan. The Government also transported its nationals from Saudi Arabia, Turkey, Iran and Syria. A substantial number of Sudanese travelled home on IOM-coordinated flights chartered individually or jointly with the EEC and UNDRO. Most of these flights left from Jordan with a few from Turkey and other countries;

(j) Vietnam: While there were no Vietnamese in Kuwait before 2 August 1990, an estimated 16,000 Vietnamese nationals were working in Iraq before the invasion. In the first few months of the crisis, a large number of Vietnamese were stranded in Iraq under life threatening conditions. They were eventually evacuated by the Vietnamese Government either through Iraq or through Turkey and Jordan. Reports indicate that the IOM evacuated 1,085 Vietnamese from Turkey in the period between 20 December 1990 and 15 January 1991. In roughly the same period, 4,000 Vietnamese were repatriated out of Jordan. The largest number of Vietnamese (over 7,000) were repatriated on flights directly out of Iraq. Approximately 16,000 Vietnamese are reported to have returned home from October 1990 to February 1991, with the assistance of the IOM, UNDRO, the European Community and the Governments of Turkey, Jordan, Iran, Japan and Egypt;

(k) Europe and the Americas: Almost all nationals of the following countries left Kuwait and Iraq by private means, or with the assistance of their Governments, during the first two months of the invasion and occupation: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Cyprus, Czech and Slovak Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Spain, Sweden, Switzerland, United Kingdom, United States and former Yugoslavia. The relatively small number that could not depart were persons who had been detained, taken hostage, or who had been refused exit visas by the Iraqi authorities, particularly nationals from OECD countries.

2. The Arrival/Departure Records

The hurried circumstances in which people departed from the Gulf region following Iraq's invasion of Kuwait were believed to have made it difficult for them to obtain or keep documentary evidence that would support a departure claim before the Commission. On the other hand, many Governments and international

organizations had information regarding individuals that had travelled from the conflict region to their countries of origin. The Commission therefore decided at an early stage to try and obtain as much of this information as possible so that it could be used in a first phase of the verification of the category "A" claims before it would be necessary to review paper claims and their attached documentation.

Thirty Governments and two international organizations (IOM and UNHCR) made such Arrival/Departure Records available. However, because of the late submission and/or the technical incompatibility of some of the records, not all of the records received could be used for the verification of claims in the first instalment. All the records that could be used were downloaded into a database (the "Arrival/Departure Database").

There are three main components in the Arrival/Departure Database. Information in computerized format provided by the Government of Iraq regarding all foreigners who departed from Iraq during the period of 2 August 1990 to 2 March 1991 is contained in a section called the "Iraqi Database". Computerized information provided by Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression (PAAC) regarding individuals who left Kuwait during the period of 2 August 1990 to 2 March 1991 is contained in a section called the "Kuwaiti MOI Database". The third component consists of the "Arrival/Departure Records" provided by international organizations and Governments other than Kuwait and Iraq that were usually submitted in paper form. The data from these records were captured by an outside company using a software developed by the secretariat. This software was designed to capture data regarding individuals that are relevant to the computerized matching of this information against the information in the claim forms, i.e. numeric information such as passport and other identification numbers and dates, and key non-numeric information such as name, sex and nationality, as well as data regarding the voyage in which the individuals were included.

In order to standardize the information contained in the Arrival/Departure Records and to achieve as much consistency as possible between the format of these records and that of the claims for the preparation of the matching, the secretariat classified and organized the records according to their source and nature into the following main categories:

(a) Travel records

- Flight passenger manifests: Lists of passengers on board chartered or commercial flights that were used for evacuation during the Gulf crisis;

- Evacuation flight invoices: Lists prepared by some of the airlines that participated in the evacuation of individuals stating the cost of the evacuation flight per passenger with a view to obtaining reimbursement from the Government that sponsored the evacuation programme;

- Ship passenger manifests: Lists of passengers on board ships that sailed from Kuwait or Iraq or other countries in the Gulf region to the country of origin of their passengers;

- Ship passenger undertakings: Standard forms that record information regarding passengers who were on board evacuation ships and in which passengers undertook to make the trip at their own risk;

- Bus passenger manifests: Lists of individuals who were transported by bus in one or more legs of their journey out of Kuwait or Iraq.

(b) Immigration/customs records produced by the departure/arrival countries' authorities

- Border post records: Lists drawn up by the immigration authorities of the submitting country containing information regarding individuals entering its territory through a border post;

- Road traveller lists: Lists of individuals who travelled by car and whose entry into countries other than Kuwait or Iraq was recorded upon arrival at a border post.

(c) Diplomatic records

- Diplomatic communications: Lists of individuals referred to in correspondence exchanged between the Ministry of Foreign Affairs of the submitting country and its diplomatic or consular offices in some of the countries in the Gulf region;

- Diplomatic records: Lists of individuals prepared for evacuation purposes by the Ministry of Foreign Affairs of the submitting country or its diplomatic or consular offices in Kuwait, Iraq or other countries in the Gulf region.

(d) Arrival/Departure Records prepared by Governmental authorities in home countries of departees

- Departure records: Lists prepared by Governments to register individuals known to have departed from Kuwait, Iraq or other neighbouring countries during the Gulf crisis;

- Arrival records: Lists prepared by Governments to record individuals known to have arrived back in their country of origin during the Gulf crisis;

- Arrival/Departure Records: Lists prepared by Governments to register individuals known to have departed from Kuwait, Iraq or any other neighbouring countries or to have arrived in their country of origin during the Gulf crisis.

(e) Evacuation records prepared by Governments or international organizations that undertook evacuation operations

- Evacuee lists: Records prepared by Governments or international organizations listing individuals who were evacuated from Kuwait, Iraq or other countries under the auspices of those Governments or international organizations;

- Company employees records: Lists established by companies involved in the performance of contracts in Kuwait or Iraq in the context of the evacuation of their employees.

(f) Other

- Refugee camp rosters: Lists of individuals who were received in refugee camps in countries neighbouring Kuwait or Iraq, mostly under UNHCR supervision;

- Lists of residents in Kuwait/Iraq: Lists of individuals known to have resided in Kuwait or Iraq prior to Iraq's invasion of Kuwait.

Based on the above classifications, the information for each record was summarized by the secretariat in a "Manual of Arrival/Departure Records". Each of the summaries provides information regarding the number of entries, the type of record, its source, the language used in the document, a description of the data and the purpose of their compilation. The Panel was greatly assisted by the Manual in its assessment of the evidentiary value of the various Arrival/ Departure Records.

3. Evidentiary value of Arrival/Departure Records

a. General considerations and determinations

Much of the work of the Panel in the first instalment has concentrated on determining whether each Arrival/Departure Record provides what is required for category "A" claims to be compensable, i.e. "simple documentation of the fact and date of departure from Kuwait or Iraq".[27]

In order to ascertain whether a record met these requirements, the data contained in the record itself were considered the primary source of information. In addition, in assigning evidentiary values to the various records, the Panel used information external to the records, such as departure reports, claims statistics and other available departure information. The contemporaneous nature of the records was an important element in the Panel's consideration of the value, but non-contemporaneous records that were compiled based on contemporaneous information were considered to be of the same value as contemporaneous records.

With respect to the fact of departure, the Panel determined that records that do not in themselves indicate the fact of departure but for which there is a reasonable indication of having been prepared in the context of an evacuation operation involving only individuals coming from Kuwait or Iraq, should be considered to show departure from Kuwait or Iraq. Similarly, records that do not refer explicitly to departure having occurred but contain information that allows for a safe assumption that the individuals covered eventually left (references such as

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[27] Decision 1, para. 11; Rules, article 35, para. 2 (b).

"scheduled to depart", "selected to leave", "intended departure dates", "destitute" individuals, "escaped", etc.) were considered to show departure.

The Panel also determined that departure from or arrival in a particular country should be assumed for all individuals on a list if reference to the fact of departure from Kuwait, Iraq or a third country, or arrival in a third country was made regarding a substantial number of the individuals on the list. At the same time, if a substantial part but not all of the lists in a record make clear reference to the fact of departure from Iraq, Kuwait or a third country, or arrival in a third country, the Panel determined that all of the individuals in the record are to be considered to have departed from or arrived in that country.

With respect to records that show arrival in or departure from countries other than Kuwait or Iraq, or where no country of arrival or departure is indicated, the Panel determined that if a letter accompanying the submission of the records or a subsequent clarification in writing from the submitting Government affirms the fact that the individuals had originally been in Kuwait or Iraq, the records are to be considered sufficient proof of those individuals' presence in Kuwait or Iraq.

For records showing internal movements in a country other than Kuwait or Iraq, the Panel determined that, in light of the information gathered from independent sources, particularly international organizations such as ILO, IOM, UNDRO, etc., establishing that such internal movements fit in the general pattern of departure from Kuwait or Iraq of nationals from that particular country during the Gulf crisis, such records prove departure from Kuwait or Iraq.

When the date of departure from Kuwait or Iraq was not stated specifically on a record, the Panel satisfied itself that the records it accepted as showing departure during the jurisdictional period had been prepared in the context of an evacuation operation involving only individuals who left during the period of 2 August 1990 to 2 March 1991.

Where a departure date is provided for most of the individuals in a list, the Panel determined that, given the circumstances in which the lists were prepared at the time, all the individuals in the list should be assumed to have travelled during the time range established for those individuals for which a date exists. Similarly, where departure dates are provided for

most of the lists in a record, the Panel determined that all the lists in the record are to be considered as falling within the time range established for those lists that include a date.

With respect to records that refer to a date outside the jurisdictional period or which contain no date, the Panel determined that if a letter accompanying the submission of such records or a subsequent clarification in writing from the submitting Government explained circumstances showing that departure had taken place during the period, those records were relied upon in support of the conclusion that those individuals' departure was within the jurisdictional period.

b. Evidentiary value of the various records

As a result of the above considerations and determinations, the Panel arrived at the following conclusions regarding the evidentiary value of the various Arrival/Departure Records.

The Panel found that the data contained in the Iraqi Database related to individuals who departed from Iraq during the period of 2 August 1990 to 2 March 1991. The Panel considered it significant that Iraq itself made these data available to the Commission, confirming that the individuals covered had departed from Iraq during the jurisdictional period. The Panel determined that a claimant who had been matched against the Iraqi Database met the evidentiary requirements and was entitled to compensation.

The Panel found that the data contained in the Kuwaiti MOI Database related to individuals who departed from Kuwait during the period of 2 August 1990 to 2 March 1991. The Panel determined that a claimant who had been matched against this Database met the evidentiary requirements and was entitled to compensation.

With respect to the Arrival/Departure Records provided by international organizations and Governments other than Kuwait and Iraq, the Panel noted that the great majority of these records showed departure from Kuwait or Iraq during the jurisdictional period, either by themselves or when considered together with additional information. For a large number of these records, the fact of departure from Kuwait or Iraq was apparent from the information contained in the records themselves.

Other records that showed departure from countries neighbouring Kuwait or Iraq, or arrival in neighbouring or home

countries during the jurisdictional period, in the circumstances, led the Panel to conclude that the persons listed on such records should be deemed to have departed from Kuwait or Iraq.

First, the Panel noted that for the great majority of such records the Governments submitting them confirmed that all the persons listed in the records were originally present in Kuwait or Iraq.

Second, the Panel took into account the fact that most of the evacuation efforts were not centered in Kuwait or Iraq but in neighbouring countries, principally Jordan. The majority of foreign nationals made their own way out of Kuwait and Iraq in chaotic conditions; most of the evacuation efforts by Governments and international organizations commenced after the fleeing individuals had reached Jordan or other border countries. These circumstances explained why many of the records provided to the Commission showed departure from countries other than Kuwait or Iraq.

Third, the Panel's conclusion was corroborated by a comparison of the information in the claims with information gathered from independent sources such as the International Labour Office (ILO) and the International Organization for Migration (IOM). For the ten countries that collectively submitted over 80 per cent of all the category "A" claims filed with the Commission, the total number of each of these countries' claimants was consistently lower than the number of people estimated by these independent sources to have departed from Kuwait or Iraq during the period of 2 August 1990 to 2 March 1991, thus showing that the number of actual claimants in no case reached the number of potential claimants that could have been expected.

The Panel, thus, determined that a claimant who had matched against one or more of the above Arrival/Departure Records provided by international organizations and Governments other than Kuwait and Iraq met the evidentiary requirements and was entitled to compensation.

Finally, the Panel found that a number of the records provided by international organizations and Governments other than Kuwait and Iraq showed neither arrival nor departure from Kuwait or Iraq and could not be relied upon as a means to prove departure.

4. The computerized matching

The goal of the computerized verification process was to determine whether a given claimant appears in one or more of the records that constitute the Arrival/Departure Database and which the Panel found to establish departure from Kuwait or Iraq during the relevant jurisdictional period.[28] In order to achieve this goal, the secretariat used a specially designed software. The general characteristics of this computerized process and the supporting software were reviewed by and met the approval of the Panel.

In the matching process the computer checks the presence of a claimant in the Arrival/Departure Database on the basis of some of the information each claimant was requested to indicate on the "A" Claim Form. In particular, the computer relies on the following data (hereinafter referred to as "matching tools"): the passport number or national identity card number, the name, the Civil Identification Number issued by Kuwait, the Residency Permit Number issued by Iraq, the nationality, the year of birth and the sex. From a general point of view, the basic operation performed by the computer is a comparison per claimant of one or more of the matching tools contained in the Claims Database with the equivalent data in the Arrival/Departure Database, if available.

The number of matches for a given population of claims (the "match rate") depends primarily on two conditions: first, on the presence of the claims information used as matching tools in the Arrival/Departure Database; and, second, on the extent to which the format of the matching tools is the same in the Claims Database and in the Arrival/Departure Database. In order to enhance the match rate, the claims therefore were subjected to several preliminary processes intended to standardize as far as possible the format of the matching tools. The matching tools most affected by those processes were the names which were all put in upper case characters, and the passport numbers which were split into a numeric part and an alphabetic part.[29]

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[28] The claims in the first instalment were matched against the three sub-components of the Arrival/Departure Database: the Iraqi Database, the Kuwaiti MOI Database and the Other Arrival/Departure Records.

[29] For instance, a passport number that appeared as "AB/12345" in the Claims Database and "AB-12345" in the Arrival/Departure Database, would appear in both Databases as "AB

In the case of family claims, which represent less than 15 per cent of the total number of claims, the Panel did not require a match to be achieved for the family members beyond the match obtained for the claimant. In light of, inter alia, the considerations expressed in Part IV. D. 1, supra, the Panel was of the opinion that the verification of the claimant's departure from Kuwait or Iraq during the jurisdictional period constituted a sufficient basis for the presumption that persons listed on the claim form as family members also departed during the relevant period.

The results of the computerized matching effort are stored by the computer in a table. The first column of the table contains the number of the claims for which matches were achieved. Each claim submitted to UNCC has been given a unique identifier ("UNCC claim number"). The second column of the table contains the number of the entry in the Arrival/Departure Records against which a match was achieved for the claim in question. Each entry in the Arrival/Departure Records also has been given a unique identifier ("verification number"). The combination of the UNCC claim number and the verification number permits the identification of claims for which a match was achieved. The table also records the particular matching tools through which matches were achieved.

In case several claimants matched against the same entry in the Arrival/Departure Database, the computer programme is designed to identify the claimant by reference to the values of the matching tools that were assigned by the Panel. Considering that not all records in the Arrival/Departure Database were deemed by the Panel to establish departure from Kuwait or Iraq during the relevant jurisdictional period, the computer programme is further designed to select from the total number of matched claims only those that matched against records that were found by the Panel to prove such departure. The claims that are included in the first instalment are those that matched against such records.

12345" after having passed through the said preliminary processes.

V. RECOMMENDED COMPENSATION FOR THE FIRST INSTALMENT OF CATEGORY "A" CLAIMS

Pursuant to article 37 (e) of the Rules, the Panel hereby presents its final recommendations on the claims comprising the first instalment of category "A" claims.

The total number and country-wise composition of category "A" claims that would comprise the first instalment for the purpose of payment of compensation having been determined by the Governing Council, as described in Part III, B., supra, and the Panel having considered the results of the verification of claims accomplished through computerized matching in all but a very small number of cases (less than one per cent) where manual matching or review of documentary evidence submitted with claim forms was involved, and further having considered all relevant circumstances and materials available with the Commission, the Panel recommends payment of compensation in respect of 53,845 claims submitted by 60 countries and by UNDP. The total recommended amount of compensation comes to US$ 185,500,500.

The Panel records that claims that were verified through computerized matching but that could not be recommended for payment due to the limits as to number and country-wise composition of the first instalment as determined by the Governing Council are expected to receive due consideration when subsequent instalments are processed for payment of compensation. Claims that could not be included in the first instalment due to such factors as defective format or possible duplication, are also expected to receive consideration when subsequent instalments are processed.

The attached Summary Table lists per country the number of claims for which payment is recommended and the total recommended amount of compensation. A table containing the breakdown of the

amounts to be paid to each individual claimant will be provided to each respective country and to UNDP separately.

Geneva, 15 September 1994

(signed) Kamal Hossain
Chairman

(signed) Matti Pellonpää
Commissioner

(signed) Rafael Rivas Posada
Commissioner

Annex

CATEGORY "A" CLAIMS RECOMMENDED FOR PAYMENT
IN THE FIRST INSTALMENT (SUMMARY TABLE)

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
AUSTRALIA	68	338,500.00
AUSTRIA	1	8,000.00
BAHRAIN	20	81,000.00
BANGLADESH	4,551	17,746,000.00
BELGIUM	6	23,500.00
BOSNIA AND HERZEGOVINA	100	408,000.00
BRAZIL	133	527,500.00
CAMEROON	1	2,500.00
CANADA	16	72,500.00
CHINA	900	3,600,000.00
CROATIA	206	840,500.00
CZECH AND SLOVAK F.R. *	96	413,000.00
CZECH REPUBLIC	1	4,000.00
DENMARK	16	50,500.00
EGYPT	23,334	61,334,000.00
ESTONIA	4	24,000.00
FINLAND	9	41,500.00
FRANCE	228	997,500.00
GERMANY	66	271,500.00
GHANA	1	2,500.00
GREECE	6	27,500.00
HUNGARY	63	294,500.00
ICELAND	1	5,000.00
INDIA	6,219	24,736,000.00
IRAN	201	672,000.00
IRELAND	99	359,500.00
JAPAN	48	216,000.00
JORDAN	123	309,000.00

* These claims were submitted before the Czech and Slovak Federal Republic ceased to exist. Awards of compensation will have to be paid to the Governments of the Czech Republic and the Slovak Republic, respectively.

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
KENYA	15	55,000.00
REPUBLIC OF KOREA	170	435,000.00
KUWAIT	3,482	17,348,500.00
THE FORMER YUGOSLAV REP. OF MACEDONIA	74	296,000.00
MALTA	3	13,000.00
MOROCCO	55	216,000.00
NEPAL	74	298,500.00
NETHERLANDS	125	497,000.00
NEW ZEALAND	14	61,000.00
NIGER	3	15,000.00
NIGERIA	5	25,000.00
NORWAY	4	18,000.00
PAKISTAN	3,027	12,226,000.00
PHILIPPINES	550	2,192,500.00
POLAND	324	1,349,000.00
ROMANIA	217	571,000.00
RUSSIAN FEDERATION	649	2,876,000.00
SEYCHELLES	1	5,000.00
SINGAPORE	4	23,500.00
SLOVENIA	161	526,000.00
SRI LANKA	6,385	25,117,000.00
SUDAN	335	1,276,500.00
SWEDEN	49	196,000.00
SWITZERLAND	6	31,500.00
SYRIA	138	576,000.00
THAILAND	330	1,322,500.00
TURKEY	108	433,000.00
UKRAINE	123	508,000.00
UNDP (JERUSALEM)	59	286,500.00
UNITED KINGDOM	240	819,000.00
UNITED STATES	200	889,500.00
VIETNAM	378	1,512,000.00
THE FEDERAL REP. OF YUGOSLAVIA (SERBIA AND MONTENEGRO)	20	80,000.00
TOTAL	**53,845**	**185,500,500.00**